

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Reexamination of Roaming Obligations of
Commercial Mobile Radio Service Providers

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) WT Docket No. 05-265
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COMMENTS OF T-MOBILE USA, INC.

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Exhibit A – Declaration of James Martinek

SUMMARY

The Commission should not impose any additional regulation on commercial mobile radio service (“CMRS”) roaming or roaming agreements at this time. Instead, the Commission should repeal the so-called “manual roaming” rule, which is an outmoded requirement that has been satisfied by the automatic roaming provided by GSM networks such as the nationwide GSM/GPRS network that T-Mobile operates.

T-Mobile’s experience is that competition regarding CMRS roaming among GSM/GPRS providers is robust. To provide broad coverage to its customers nationwide, T-Mobile relies extensively on roaming agreements with other carriers that have networks that are compatible with its GSM/GPRS network. T-Mobile has reached roaming agreements with all other GSM/GPRS carriers in the United States. T-Mobile shares reciprocal and mutually beneficial business relationships with its roaming partners, whether they are nationwide or regional carriers. In doing so, T-Mobile strives to deal with its roaming partners in a reasonable manner and to ensure that its roaming arrangements are mutually beneficial. At the same time, it competes against many of these partners.

As CMRS competition has matured in the last decade, a wide range of wireless services from multiple service providers are now available to the vast majority of consumers in the United States. As Congress and the Commission have long envisioned, the success and resiliency of the mobile marketplace has been due to pro-competitive, deregulatory policies. These policies have resulted in the continued development and availability of innovative wireless services and technologies, ubiquitous coverage areas, and low retail rates. Roaming is both an integral part of the CMRS marketplace and the basis of significant competition as carriers try to expand their service areas in response to consumer demand.

If the Commission were to regulate roaming further, however, the effects would negate any competitive benefits to the detriment of consumers. The Commission recognized in its prior decisions regarding the development of the CMRS industry that imposing roaming requirements is justified only if market forces were insufficient to ensure the availability of competitive roaming services.

Because market forces are working well, the Commission should eliminate the so-called “manual roaming” rule. This rule was adopted during the infancy of the CMRS marketplace to promote “nationwide, ubiquitous, competitive wireless voice” services. Competition and improvements in technology have more than met the goal of this rule, which GSM providers satisfy using automatic roaming. Manual roaming is now obsolete and fails to satisfy consumer interests. The GSM standard does not even support manual roaming.

The Commission also should reject suggestions that it impose an automatic roaming requirement or some form of non-discrimination requirement regarding roaming arrangements. Regulation in this case is unnecessary because regulatory intervention into roaming relationships would harm, not benefit consumers. Similarly, the Commission should not regulate the terms or conditions of roaming agreements. Various parties express concern that larger, nationwide carriers have some competitive advantage regarding CMRS roaming. As the fourth largest wireless carrier in the United States, T-Mobile actively seeks additional coverage, as do smaller and regional carriers. T-Mobile’s experience is that competition and market forces constrain its ability to act in an unreasonable manner toward its roaming partners.

It also would be a mistake for the Commission to hinder a wireless carrier’s technological flexibility by requiring it to facilitate another carrier’s ability to roam on its network. Competition in the CMRS marketplace has resulted in major technological innovation and

considerable variety in products and services, which wireless carriers use to differentiate themselves from each other when competing to maintain existing subscribers and attract new ones. Regulating this area would remove these powerful market-based incentives to innovate. Furthermore, new technologies, such as handsets with chipsets for multi-band and multimode operations, are being developed that, through the operation of market forces, will eliminate technological impediments to roaming on different networks, increase the number of potential roaming partners, and continue downward pressure on retail roaming rates.

In T-Mobile's experience, roaming is sufficiently competitive to avoid imposing new rules to regulate roaming arrangements. If, however, a particular carrier engages in unlawful discrimination or anticompetitive activity related to roaming in violation of the Communications Act, the Commission can and should address that behavior through complaint proceedings or enforcement actions, rather than impose broad roaming requirements on the entire industry.

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) urges the Commission to use the Notice of Proposed Rulemaking in the above-captioned proceeding (“NPRM”)¹ as an opportunity to finally eliminate outmoded roaming regulations and to continue to rely on the marketplace to govern roaming and roaming negotiations between wireless carriers. T-Mobile supports the Commission’s efforts to ensure competitive forces enable consumers to have access to ubiquitous and quality wireless services at reasonable rates, terms and conditions. Commercial mobile radio services (“CMRS”) are highly competitive, and a wireless carrier’s coverage area has become an important competitive factor in the marketplace. Competition has resulted in and will continue to drive the development of new and innovative wireless services and technologies, expanded coverage areas, and low rates. Those consumer benefits, however, will be in jeopardy if the Commission unnecessarily regulates CMRS roaming arrangements because the flexibility and efficiencies reflected in these arrangements will be restricted.

¹ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, WT Docket No. 05-265, FCC 05-160 (rel. Aug. 31, 2005) (“NPRM”).

I. INTRODUCTION.

T-Mobile is an independent CMRS provider and one of four nationwide wireless carriers.² Through its subsidiaries and affiliates, T-Mobile constructs and operates broadband personal communications service (“PCS”) systems throughout the United States. T-Mobile employs a GSM/GPRS platform, which is designed to operate with all other GSM operators in the United States and the world. As an independent GSM/GPRS provider throughout the United States, T-Mobile offers a unique perspective on the wireless industry and CMRS roaming in particular. T-Mobile competes vigorously with other, larger, nationwide wireless carriers, as well as the many regional wireless carriers that operate throughout the United States. Providers of resold wireless services (*e.g.*, mobile virtual network operators or “MVNOs”) also are becoming strong market competitors.

Because of the highly competitive nature of the wireless marketplace, the success of any wireless carrier is rooted in whether it can meet consumer demand for affordable wireless services wherever consumers require access. As the fourth largest nationwide carrier in the United States, T-Mobile relies on extensive roaming agreements with other carriers that have systems that are compatible with T-Mobile’s GSM/GPRS network to fill out its national footprint, especially in rural areas.³ The GSM/GPRS platform itself is an open, evolving non-proprietary system that facilitates automatic roaming capability. The GSM standard originally was developed in Europe where cross-border traffic by wireless subscribers is common. Having

² T-Mobile holds licenses covering more than 275 million people in 46 of the top 50 U.S. markets and currently serves more than 20 million customers. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in more than 6000 convenient public locations, such as Starbucks coffee houses, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world.

³ See Declaration of James Martinek, T-Mobile at ¶ 5 (Nov. 28, 2005), attached as Exhibit A, (“Martinek Declaration”).

a different cellular technology in each country would be a significant hindrance to using wireless services and overall economic growth.⁴ As a result, the GSM/GPRS standard used by T-Mobile and others in the United States is designed to provide efficient and seamless automatic roaming capability among GSM providers.

Successful roaming relationships are essential to T-Mobile's strategy of keeping existing subscribers and attracting new ones. T-Mobile, in fact, has entered more than 45 automatic roaming agreements nationally – that is, with all other GSM/GPRS wireless carriers in the United States.⁵ T-Mobile is engaged in automatic open roaming with those carriers today except for a handful of carriers that are still testing their systems.⁶ T-Mobile's roaming agreements apply to operations at both 850 MHz and 1900 MHz so that its subscribers and those of its roaming partners have access to the most capacity possible for ubiquitous roaming.⁷ As a consequence, T-Mobile's subscribers have access to an area of more than six hundred fifty thousand (650,000) square miles in the United States where T-Mobile does not have network facilities.⁸ Moreover, T-Mobile has introduced an interactive Personal Coverage Check feature to its website and retail stores that allows customers to check the range and quality of network coverage by state, city, intersection and even a specific address.⁹ The Personal Coverage Check includes areas where T-Mobile service is available only through roaming agreements. Thus, the

⁴ *Id.* ¶ 7.

⁵ *Id.* ¶ 6.

⁶ *Id.*

⁷ *Id.* ¶ 4.

⁸ *Id.* ¶ 6.

⁹ *See id.* ¶ 15; T-Mobile USA, Inc., Personal Coverage Check, available at www.t-mobile.com/coverage/?class=coverage.

competitive pressures on T-Mobile to succeed in the marketplace means that solid roaming relationships are extremely important for T-Mobile to meet the demands of existing and new subscribers nationwide for expanded coverage areas.

In T-Mobile's experience, roaming negotiations reflect the robustly competitive marketplace in which wireless carriers operate. Indeed, because there are two nationwide GSM/GPRS carriers, even the smallest GSM providers have a choice of roaming partners. T-Mobile recognizes that although it competes with other wireless carriers to serve consumers, it also shares business relationships with them in a reciprocal, mutually beneficial manner.¹⁰ However, outside those markets where roaming agreements are necessary, T-Mobile and its roaming partners compete vigorously using their own respective networks and retail presence.

Because of the importance of roaming to T-Mobile, it strives to create "win-win" situations benefiting it, its roaming partners, and all associated customers. T-Mobile has strong incentives to negotiate fairly with all carriers – regardless of whether they operate on a nationwide or regional basis – in order to obtain the most efficient and widespread coverage for its customers. T-Mobile endeavors to deal with its roaming partners in a reasonable manner so that not only can T-Mobile's customers roam on their networks, but its partners' customers can roam on T-Mobile's network as well.¹¹

T-Mobile has entered into roaming agreements with operators in certain urban markets, but the majority of T-Mobile's roaming arrangements are with small carriers in more rural portions of the United States.¹² T-Mobile's opportunities to enter into roaming agreements are at

¹⁰ See Martinek Declaration, ¶ 10.

¹¹ *Id.* ¶¶ 10-14.

¹² *Id.* ¶ 8.

times limited by technologically incompatible networks, particularly in rural areas. As the number of carriers operating GSM/GPRS networks increases and multimode handsets are increasingly deployed, T-Mobile looks forward to considering additional roaming arrangements based on coverage requirements, network quality and rates.

II. UNNECESSARILY REGULATING HIGHLY COMPETITIVE CMRS ROAMING WILL HARM THE PUBLIC INTEREST.

A. CMRS Roaming Is Highly Competitive.

In contrast to the conditions that the Commission considered when it last ruled on wireless roaming issues in 1996, wireless services have grown significantly and the CMRS marketplace has become highly competitive.¹³ Specifically, the Commission has found that 97 percent of the total U.S. population lives in counties with access to at least three different wireless carriers and that 93 percent lives in counties with access to at least four different wireless carriers.¹⁴ Subscribership, penetration, and revenues generated by the wireless industry continue to increase each year and totaled almost 185 million, approximately 62 percent, and more than \$100 billion, respectively, at the end of 2004.¹⁵ The price of mobile services also has declined to approximately nine cents per minute.¹⁶

¹³ See NPRM, ¶ 11; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Tenth Report, WT Docket No. 05-71, FCC 05-173 (rel. Sept. 30, 2005) (“*Tenth Annual CMRS Competition Report*”).

¹⁴ *Tenth Annual CMRS Competition Report* at Appendix A, Table 9. The Commission also concluded that it was unlikely that the merger of Sprint Corporation and Nextel Communications, Inc. would “result in anticompetitive effects regarding roaming services because it will not reduce the number of iDEN or CDMA nationwide roaming partners for smaller, rural, and/or regional providers.” *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, FCC 05-148, ¶ 126 (rel. Aug. 8, 2005) (“*Sprint/Nextel Merger Order*”).

¹⁵ *Tenth Annual CMRS Competition Report*, ¶ 161, Appendix A, Table 1.

¹⁶ *Id.* at Appendix A, Table 8.

T-Mobile and other wireless carriers continue to compete strenuously based upon price, types of services and service plans, technology and upgraded systems, marketing, and quality of service. Consumers are the driving force of the CMRS industry because of their demand for new, innovative services and their increasing sophistication. Educated consumers who can make informed choices regarding service characteristics are one of the hallmarks of a competitive marketplace. Wireless carriers are thus constantly driven to develop and deploy innovative technologies and offerings to respond to consumer demand and to differentiate themselves from competitors.

A principal factor that many consumers consider when choosing a wireless carrier and plan is coverage area and whether they will incur additional charges for roaming on other carriers' wireless networks.¹⁷ T-Mobile and other carriers rely on reasonable and economically efficient roaming agreements to expand their coverage areas where they do not own facilities. In fact, many carriers offer some form of national (or near-national) service plan without separate long distance or roaming charges, and they use coverage and roaming as means to distinguish themselves from competitors (*e.g.*, T-Mobile's Personal Coverage Check described above). Consequently, roaming has developed into a vibrant aspect of the industry, generating approximately \$4.2 billion in revenues in 2004, an almost ten percent increase from the prior year.¹⁸

B. T-Mobile Has Not Seen Evidence In the Marketplace Requiring Governmental Intervention For Roaming Arrangements.

As described above, the Commission's own studies demonstrate the continuing competitive nature of the wireless marketplace and CRMS roaming in particular. As the

¹⁷ *Id.* ¶¶ 97, 105, 177.

¹⁸ *Id.* at Appendix A, Table 1.

Commission previously recognized, imposition of a wireless roaming requirement could be warranted only if market forces were insufficient to ensure the availability of competitive roaming services, and this is not the case.¹⁹ As recognized by the Commission:

Even the “nationwide” carriers still have holes in their licensed services areas... and therefore have a strong incentive to enter into roaming agreements with other carriers in order to fill in coverage gaps, compete on the basis of coverage, and thereby meet growing consumer demand for nationwide single-rate calling plans.... [C]arriers offering a single-rate price plan have a strong incentive to negotiate to lower roaming rates they pay to other carriers. Conversely, competition and the need to generate revenues prevent nationwide carriers from refusing to enter into roaming agreements with smaller local and regional carriers or raising the roaming rates they charge other carriers above competitive levels.”²⁰

The NPRM questions whether larger, nationwide carriers are leveraging their position in the market to charge discriminatory roaming rates, negotiate unreasonable terms and conditions, or refuse entirely to negotiate roaming arrangements with other wireless carriers.²¹ T-Mobile has seen no indication that competition for CMRS roaming has been hindered by discrimination by larger wireless carriers. As noted above, T-Mobile has been motivated to successfully negotiate roaming agreements with all other GSM/GPRS carriers in the United States based upon mutually-beneficial terms and conditions.

Moreover, smaller GSM/GPRS operators do not depend solely on T-Mobile for roaming capability, but can and do enter into agreements with Cingular, the other (and larger) nationwide GSM/GPRS provider, as well as other carriers. T-Mobile, of course, competes with the larger

¹⁹ *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, Notice of Proposed Rulemaking, 15 FCC Rcd 21628, 21635 (2000).

²⁰ *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. For Consent to Transfer Control of Licenses and Authorizations*, 19 FCC Rcd 21522, 21589-90 (2004) (“AT&T/Cingular Merger Order”).

²¹ NPRM, ¶¶ 27, 38-43.

Cingular as well as other larger wireless carriers. Any attempt by either nationwide operator to refuse roaming or charge inflated roaming rates would encourage a roaming partner to send its roaming traffic to the other nationwide operator, decreasing the first operator's roaming revenue.²²

The concerns of some carriers about roaming relationships, mentioned in the NPRM, are speculative at best.²³ Allegations of improper market behavior are serious matters. T-Mobile is not aware of any credible evidence, much less empirical analysis, of such behavior that supports the conclusion that roaming arrangements are deficient or anti-competitive, particularly in the GSM/GPRS industry. As further discussed below, the Commission has existing remedies to address any such allegations of misconduct. The Commission should exhaust all available remedies before expanding its regulations, and even then adopt regulations based only on careful analysis of all available evidence. Adopting regulations that would themselves thwart competition based on mere allegations of possible anti-competitive conduct does not serve the public interest.²⁴

T-Mobile's roaming arrangements generally address one of three factual situations.²⁵ In the first, T-Mobile's roaming partner has retail customers and a network that does not overlap with T-Mobile's network. Both parties benefit from gaining roaming capability in areas where they do not have facilities-based service and from earning roaming revenues. In the second case,

²² See Martinek Declaration, ¶ 9.

²³ See NPRM, ¶¶ 38-39.

²⁴ See, e.g., *Telephone and Data Systems, Inc. v. FCC*, 19 F.3d 42, 47-48 (D.C. Cir. 1994) (concluding that a party does not have standing to challenge the Commission's approval of a transaction based upon "unadorned speculation" that requires the court to "presume illegal activities" that have not occurred).

²⁵ See Martinek Declaration, ¶¶ 11-14.

T-Mobile's roaming partner has retail customers and a network that does overlap with T-Mobile's network and thus offers no opportunity for T-Mobile to expand its footprint. T-Mobile values these agreements and will seek fair and reasonable terms so that its roaming partners' subscribers use T-Mobile's nationwide network rather than its competitors' networks. In the third case, T-Mobile's roaming partner is facilities-based and typically located in a remote area, but has no retail customers. Again, it is in T-Mobile's best interest to negotiate fairly with these operators so T-Mobile's subscribers can roam in these markets. The majority of T-Mobile's roaming partners have their own retail customers consistent with the first two cases described above, or a hybrid of the two cases where there is partial overlap of the carriers' networks. In these cases, T-Mobile's roaming agreements generally are reciprocal in nature, with both parties having similar rights, obligations, and roaming rates.

III. THE COMMISSION SHOULD CONTINUE TO ALLOW THE MARKETPLACE TO CONTROL ROAMING ARRANGEMENTS.

Competitive roaming has developed in the United States based largely upon consumer demand for expanded coverage areas and carriers' attempts to meet those demands. To ensure the continued success of those efforts, the Commission should eliminate its so-called "manual roaming" requirement and reject suggestions to impose an automatic roaming and/or non-discrimination requirement on roaming arrangements.²⁶

Consumers no longer wish to pay for and elect roaming charges separately, but instead expect roaming and operational costs to be incorporated seamlessly into their overall service rates. This is best achieved through the negotiation of automatic roaming agreements. In T-Mobile's experience, allowing the marketplace to govern such agreements, rather than

²⁶ As the NPRM explains, manual roaming is the most rudimentary form of roaming and requires a wireless subscriber to establish manually a roaming relationship with a host carrier before the subscriber can place or receive a call using the host carrier's network. *See* NPRM, ¶ 3.

regulation, has effectively promoted fair, non-discriminatory and mutually beneficial roaming arrangements.

A. The Commission Should Eliminate The So-Called “Manual Roaming” Requirement.

The Commission’s current rule commonly known as the “manual roaming” rule does not, by its terms, mention manual roaming.²⁷ The forerunner of Section 20.12(c) was adopted more than two decades ago to address the deployment of the first cellular systems.²⁸ At that time there were at most two wireless carriers in each market throughout the country. Almost a decade ago, the Commission extended this requirement to broadband personal communications service (“PCS”) and specialized mobile radio service (“SMR”), again during the initial rollout of those then-new services.²⁹ The Commission concluded in 1996 that this requirement was “important to the development of nationwide, ubiquitous, and competitive wireless voice telecommunications” and that when new wireless systems “are being built, market forces alone may not be sufficient to cause roaming to become widely available.”³⁰

²⁷ See 47 C.F.R. § 20.12(c) (“Section 20.12(c)”). This rule provides:

Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee’s licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

²⁸ *An Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*, 86 F.C.C.2d 469 (1981).

²⁹ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462 (1996) (“*Interconnection and Resale Obligations Second Report and Order*”).

³⁰ *Id.* at 9464.

Section 20.12(c), however, is of little use to consumers or providers of GSM/GPRS services given technological and business advances within the last decade. Changes in the CMRS marketplace have eliminated the need for either the current Section 20.12(c) or a rule that mandates a manual roaming requirement. As a general matter, the CMRS marketplace has become highly competitive with nationwide and regional wireless carriers offering facilities-based and resold services. CMRS systems now have been widely built out in many areas of the United States. Wireless carriers continue to enter into roaming agreements and, where necessary, construct facilities in order to meet consumer demand for expanded coverage areas. Consequently, the vast majority of the country's population lives in areas with access to wireless services.

The NPRM asks for comment on the status of manual roaming.³¹ Manual roaming is an artifact of a wireless world of analog cellular and TDMA technology. In contrast, and driven largely by competition, wireless networks and handsets have matured technologically in the last decade to better accommodate automatic roaming. Modern handsets now allow roaming across A and B block cellular and PCS bands and between analog and digital technologies. As discussed in Section IV below, handsets also are already being developed that have the potential to allow roaming across digital standards (such as both CDMA and GSM/GPRS). In time, the cost and application of these handsets will decrease based upon economies of scale and scope, making them affordable for carriers to deploy them widely to satisfy consumer demand.

T-Mobile and other GSM/GPRS carriers in the United States provide automatic roaming to their subscribers as an integral part of the advanced automatic roaming capabilities of the GSM technical standard. T-Mobile's roaming agreements with all other U.S. GSM/GPRS

³¹ NPRM, ¶¶ 21-24.

providers permit this automatic roaming nationwide. GSM/GPRS systems automatically register roaming GSM customers to ensure seamless handoffs without the awkward interactions required for manual roaming. Indeed, the GSM standard does not even provide for manual roaming. As a result, for GSM/GPRS carriers and subscribers, Section 20.12(c) is superfluous.

In contrast to automatic roaming, manual roaming (if even technically available) requires subscribers to take several awkward steps to place a call, including manually registering with the host system, placing a call through an operator, and providing a credit card number for payment purposes. If roaming manually, subscribers also often cannot receive calls unless they physically register or otherwise inform the host system that they seek to roam on its network.³² Most subscribers likely have no idea if their wireless handsets have manual roaming capability and if they do, how to use that functionality.

Because consumers overwhelmingly prefer the simplicity of automatic roaming compared to the cumbersome, distracting and annoying manual process, automatic roaming has effectively replaced manual roaming. Manual roaming also has become obsolete due to the widespread offering of competitive pricing plans that incorporate roaming into overall service rates. Sprint PCS stated more than two years ago that at that time less than one percent of its roaming minutes involved manual roaming.³³ In the intervening years, manual roaming has become even less viable, and wireless technologies (such as GSM/GPRS) have matured past manual roaming functionality. Having a manual roaming capability is not a positive selling point in today's CMRS market environment. Rather, manual roaming hinders wireless

³² See Martinek Declaration, ¶ 7.

³³ See Automatic Roaming is Essential to Consumers and Helps Provide Ubiquitous Wireless Coverage Throughout the Nation at 2 (Mar. 7, 2002) (Attachment 2 to the Sprint PCS March 2002 Ex Parte).

development by requiring wireless carriers that have manual roaming capability to retain legacy network and administrative features that are no longer used or wanted by consumers.

Accordingly, there is great public benefit in eliminating Section 20.12(c) and no benefit in retaining it or modifying it to refer specifically to manual roaming.

B. The Commission Should Not Adopt An Automatic Roaming Or Non-Discrimination Requirement, Which Would Be Detrimental To The Public Interest.

Without compelling evidence that existing practices of wireless carriers hinder the operation of the CMRS marketplace to the detriment of consumers, an automatic roaming or non-discrimination requirement is unnecessary and would be harmful to the public interest.³⁴ Consumers have benefited from competition in the CMRS industry and its continuously evolving technologies, new and innovative services, ever expanding coverage areas, and lower retail rates from a variety of different wireless service providers.

Applying an automatic roaming requirement to GSM/GPRS carriers is particularly ill-advised. GSM/GPRS carriers like T-Mobile have been and will continue to be open to roaming arrangements with other technologically compatible carriers.³⁵ The GSM platform was, in fact, developed to be an open, evolving non-proprietary system that facilitates roaming capability.³⁶ As previously noted, T-Mobile already has reached and implemented automatic roaming agreements with all other GSM/GPRS carriers operating in the United States based upon reasonable and mutually-beneficial rates, terms and conditions that were competitively negotiated. Consequently, T-Mobile customers have significant roaming capabilities and the

³⁴ See generally NPRM, ¶¶ 25-43.

³⁵ See Martinek Declaration, ¶ 7.

³⁶ See GSM Association, GSM World, Frequently Asked Questions, *available at* www.gsmworld.com/technology/faq.shtml.

customers of T-Mobile's roaming partners have the technological ability to roam freely on T-Mobile's GSM network.³⁷ Without regulation, nationwide roaming and long distance have become staples of T-Mobile's pricing plans because consumers demand such offerings. T-Mobile's goal is to ensure that its subscribers can seamlessly use their wireless devices throughout the United States without any concerns about whether they may be "on-net" (*i.e.*, using T-Mobile's physical network) or "off-net" (*i.e.*, roaming on another wireless carrier's network). Accordingly, whenever possible, T-Mobile does not distinguish between the use of its network and that of another carrier from a service or billing perspective.³⁸

The benefits that consumers have secured in the competitive wireless marketplace will be substantially limited if the Commission imposes automatic roaming regulation. T-Mobile has found that its roaming partners have significant variations in their networks and services, even when operating under the flexible and efficient GSM standard.³⁹ Such regulation would force wireless carriers to conform their roaming arrangements to the dictates of an administrative rule that does not adjust to such variations rather than the needs and demands of their customers and their roaming partners. An automatic roaming rule could result in substantial compliance costs to address these network variations with little, if any, benefit to consumers.

An automatic roaming regulation that is nominally designed to prevent discrimination would have the effect of reducing all carriers' roaming arrangements to a least common denominator. A rule requiring a wireless carrier to provide all "similarly situated" carriers with

³⁷ See Martinek Declaration, ¶ 6.

³⁸ *Id.* ¶ 15. T-Mobile also applauds the Commission's efforts to inform consumers regarding wireless services, including coverage areas and roaming in particular. See FCC Consumer & Governmental Affairs Bureau, *Understanding Wireless Phone Coverage Areas*, available at <http://ftp.fcc.gov/cgb/consumerfacts/cellcoverage.html>.

³⁹ Martinek Declaration, ¶ 7.

the same roaming rates, terms and conditions would limit carriers' responses to competitive market forces.⁴⁰ This type of rule would limit wireless carriers' ability to differentiate their roaming services on the basis of geographic coverage or service quality. Such regulation also would remove incentives to develop new and innovative services and technologies, and it would distort carriers' decisions regarding the extent of facilities-based competition and the need for nationwide footprints. Such a rule also effectively prevents wireless carriers from setting wholesale roaming rates based upon competitive market forces, which ultimately will cause retail rates to increase.

The costs of implementing an artificial automatic roaming requirement or a non-discrimination requirement also far outweigh any alleged benefits of those requirements.⁴¹ Carriers would have to rewrite many of their existing roaming agreements in order to conform them to the new rules. Those agreements typically are highly complex. Their terms address factors such as volume commitments, network quality, location, subscribership, the markets involved, the unique characteristics of the carriers involved, and sometimes the acquisition of wireless licenses and/or other assets. All of those factors and others are taken into consideration when establishing roaming rates and other conditions in an agreement or series of agreements. Often, for example, the roaming agreement may be associated with a spectrum lease agreement or agreements that address other commercial relationships between the parties.⁴²

⁴⁰ See NPRM, ¶ 33.

⁴¹ See *id.*, ¶¶ 28-29.

⁴² See Martinek Declaration, ¶ 10.

Suggestions that the Commission regulate automatic roaming⁴³ are far too short-sighted because they would require carriers to focus on one factor only – roaming. Such a regulatory intervention into roaming issues would impact the negotiation of all of the other terms and conditions that define the commercial relationship between roaming partners, with unpredictable results. Carriers may respond by entering into separate arrangements for roaming, with the possibility of increasing costs for the parties and, therefore, wholesale roaming rates. Ultimately, retail roaming rates paid by consumers, which have been steadily decreasing due to competitive market forces, could also increase.⁴⁴ Higher transactional and roaming costs also may slow the once rapid expansion of new services, such as data and prepaid roaming services, to the detriment of consumers.⁴⁵

C. There Is No Basis For Adopting Regulations Limiting The Ability Of Carriers To Negotiate Roaming Agreements.

In addition to rejecting imposition of an automatic roaming or non-discrimination rule, the Commission should reject attempts by some carriers to unnecessarily regulate roaming agreements.⁴⁶ These carriers raise concerns about roaming agreements that are exaggerated in T-Mobile's experience. The Commission should not inject itself into the negotiation of roaming agreements for many of the same reasons that T-Mobile has described above. T-Mobile's experience is that the workings of the competitive marketplace are addressing the concerns of the few carriers cited in the NPRM. Those concerns do not justify further regulation, particularly

⁴³ See NPRM, ¶¶ 26, 38-40.

⁴⁴ Cf. *Tenth Annual CMRS Competition Report*, ¶¶ 154-58 (describing how wireless rates have continued to decrease over the last several years).

⁴⁵ Cf. *id.*, ¶¶ 165, 170-73 (reporting on the significant increase in use of mobile data services in the United States).

⁴⁶ See NPRM, ¶¶ 33-37.

given the success of T-Mobile and other GSM/GPRS carriers in reaching favorable roaming agreements without regulatory intervention.

As explained above, T-Mobile has every incentive to enter into reasonable roaming agreements, even in the most rural areas, to expand its national footprint, and therefore to enter into roaming agreements with those roaming partners that have similar financial objectives. Other wireless carriers have similarly noted that because they require roaming services from other carriers, they have no incentive to demand unreasonably high or discriminatory roaming rates.⁴⁷ To date, T-Mobile has had the flexibility to respond to competitive market forces by entering into varying types of roaming arrangements with its roaming partners that best meet the needs of existing and new subscribers.

Multiple factors affect how roaming agreements are negotiated and implemented. Wireless carriers will no longer be able to take those other factors into consideration when negotiating roaming arrangements. Instead, a wireless carrier would be limited to certain standard roaming rates, terms and conditions that would not reflect existing market conditions. Common roaming rates would likely be higher in many cases than would otherwise be developed under competitive market forces.

Furthermore, the Commission should not require wireless carriers to enter into reciprocal arrangements with roaming partners. Wireless carriers will enter into such arrangements when it is in the best interests of both carriers and their subscribers to do so. There are many reasons why a roaming agreement may or may not be reciprocal. For example, T-Mobile has entered into several non-reciprocal roaming arrangements where it has network facilities in the same

⁴⁷ See, e.g., *AT&T/Cingular Merger Order*, 19 FCC Rcd at 21586-87; *Sprint/Nextel Merger Order*, ¶ 124; *Applications of Western Wireless Corp. and ALLTEL Corp. For Consent to Transfer Control of Licenses and Authorizations*, 20 FCC Rcd 13053, ¶ 106 (2005).

market as its roaming partner and thus does not need roaming rights. In those cases, however, T-Mobile still provides reasonable roaming rates, terms and conditions to permit its partner's customers to roam on the T-Mobile network. Otherwise, T-Mobile's roaming partner could instead enter into a roaming agreement with another nationwide GSM/GPRS carrier, and T-Mobile would lose that roaming revenue.⁴⁸ To mandate reciprocity in roaming agreements ignores the structure of the CMRS marketplace and would likely result in increased costs that ultimately would be borne by consumers.

D. The Commission Has Ample Existing Authority To Address Specific Competitive Issues Involving Roaming.

The Commission's enforcement authority under Title II of the Communications Act of 1934, as amended (the "Act") is more than sufficient to police any possible competitive issues involving roaming arrangements. As common carriers subject to Title II of the Act,⁴⁹ wireless providers are subject to the provisions of Sections 201 and 202 of the Act prohibiting unjust and unreasonable charges, practices, and discriminatory conduct and to the complaint process set forth in Section 208 of the Act.⁵⁰ To the extent that a wireless carrier or consumer believes it is the subject of unjust or unreasonable discrimination relating to roaming, it can pursue remedies through the Commission's informal or formal complaint process.⁵¹ Wireless carriers in the past

⁴⁸ See Martinek Declaration, ¶ 9.

⁴⁹ See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9468-69; see also 47 C.F.R. § 20.15 (listing the Title II provisions that are applicable to wireless carriers); 47 U.S.C. § 332(c)(1) (stating that CMRS providers shall be treated as common carriers for purposes of the Act).

⁵⁰ 47 U.S.C. §§ 201, 202, 208; 47 C.F.R. §§ 1.711 *et seq.* The Commission's accelerated complaint procedures also are available. See *id.* § 1.730.

⁵¹ The Commission and the U.S. Court of Appeals for the District of Columbia have concluded that charging customers or offering services under varying rates, terms and conditions is not *per se* unjust or unreasonable under Section 202 of the Act. For example, in *Orloff v. FCC*, 352 F.3d

have used this process successfully on roaming matters.⁵² There is no basis for imposing broad roaming requirements on this entire competitive industry when a more targeted mechanism already exists for the Commission to police alleged unlawful behavior in any particular factual situation.

IV. A WIRELESS PROVIDER'S TECHNOLOGICAL FLEXIBILITY SHOULD NOT BE HINDERED BY REQUIRING IT TO FACILITATE ANOTHER CARRIER'S ABILITY TO ROAM ON ITS NETWORK.

One benefit of robust competition for CMRS is technological innovation, including the development and use of different technological standards and the continuous upgrade of those standards (*e.g.*, to 2.5 and 3G systems). As the Commission recently stated:

Thanks to the flexibility afforded by the Commission's market-based approach, different U.S. carriers have chosen a variety of different technologies and associated technology migration paths, and competition among multiple incompatible standards has emerged as an important dimension of non-price rivalry in the U.S. mobile telecommunications market and a distinctive feature of the U.S. mobile industry model.⁵³

415, 419-21 (D.C. Cir. 2003), the court agreed with the Commission that haggling and setting rates by negotiation is a normal feature of competitive markets that benefits consumers. The court concluded that "[a] carrier's success should be driven by technological innovation, service quality, competition based pricing decisions, and responsiveness to consumer needs – and not by strategies in the regulatory arena." *Id.* at 419 (citations omitted). However, parties remain free to pursue claims that carrier behavior is unreasonable or unjust under Sections 201 and 202 of the Act.

⁵² See Letter from Luisa L. Lancetti, Vice President Regulatory Affairs - PCS for Sprint PCS, to William F. Caton, Acting Secretary, Federal Communications Commission, WT Docket No. 00-193 (Mar. 8, 2002) ("Sprint PCS March 2002 Ex Parte") ("This 'enforcement as necessary' approach has been highly successful: automatic roaming is widely available and the FCC has been able to act with benefit of specific factual context (with most cases settled)."). See, *e.g.*, *Radiofone, Inc. v. BellSouth Mobility, Inc.*, 14 FCC Rcd 6088 (WTB 1999) (denying a formal complaint that a wireless carrier engaged in predatory and discriminatory behavior); *Sunshine Cellular v. Vanguard Cellular Systems*, 8 FCC Rcd 4459 (CCB 1993) (reporting the settlement of a dispute regarding a reciprocal roaming agreement).

⁵³ *Tenth Annual CMRS Competition Report*, ¶ 106.

The development of multiple wireless standards has led to services differing across technologies and consumers benefiting from greater product variety. The diverse services and offerings that have developed also helps ensure that carriers are unable to coordinate behavior to restrict competition through pricing.⁵⁴ As a general matter, wireless carriers must innovate in order to stay competitive.

In light of this reality, the Commission should not adopt the NPRM's attempt to tailor an automatic roaming rule to apply even when carriers are moving to new, more advanced standards.⁵⁵ To the contrary, attempting to apply such a rule to evolving or new standards and technologies will have the perverse effect of discouraging more efficient standards from being deployed. Many of the benefits of innovation would disappear because technological development would stagnate. This would disserve consumers by denying the lower prices and better services that innovation brings.

Technical handset innovations, prompted by CMRS competition, are further negating the need for roaming regulation. In particular, the ongoing development of multi-band and multimode handsets with chipsets that can support multiple digital standards is removing technical impediments to roaming on networks with different technical standards such as GSM/GPRS and CDMA. New handsets with multi-standard capabilities are already in development and some are now available.⁵⁶ The availability of such handsets will give carriers

⁵⁴ *Id.* ¶ 107.

⁵⁵ *See* NPRM, ¶¶ 44-47.

⁵⁶ *See, e.g.,* David A. Kelley, *Using Your Cellphone Anywhere in the World*, New York Times, June 19, 2005, at Section 5, p. 6 (June 19 2005) (noting that the Samsung SCH-A790 and Motorola A840 are compatible with both GSM and CDMA networks); Zi Corporation News Release, *Zi Corporation's Decuma Japanese Handwriting Technology Selected for New Motorola 3G Smartphone* (Sept. 6, 2005), <http://www.zicorp.com/pressreleases/090605.htm>

new incentives to pursue roaming agreements with carriers that rely on other technical standards to increase their coverage areas where previously they were precluded due to technology constraints. Similarly, SDR, when commercially deployed, will increase carriers' roaming options. This potential for more roaming partners will increase competition in the roaming marketplace to the benefit of consumers. In contrast, seeking to impose automatic roaming regulation on new standards and technologies as they develop will stifle innovation, including the development of handsets that would remove technological barriers to roaming on networks with different standards.

T-Mobile believes that the upcoming sunset of the Commission's rule requiring cellular carriers to provide analog service should proceed on schedule. The time remaining before the sunset date on February 18, 2008 is more than sufficient for the few remaining analog customers to make alternative service arrangements. More to the point, the sunset of the analog rule does not justify an automatic roaming requirement for any type of wireless service.⁵⁷ The Commission previously concluded that "the general migration to digital technology in this industry mitigates any effect that the reduction in analog carriers might have on the roaming market."⁵⁸ The availability of current dual-mode handsets that allow analog-digital roaming further diminishes concerns that the sunset of the analog rule requires some form of roaming requirement.⁵⁹ Wireless carriers will continue to react and tailor their service offerings to

(describing Motorola's FOMA M1000 handset as "the world's first-ever WLAN-integrated W-CDMA and GSM/GPRS dual-mode smartphone").

⁵⁷ NPRM, ¶¶ 48-49.

⁵⁸ *AT&T/Cingular Merger Order*, 19 FCC Rcd at 21590.

⁵⁹ *Id.*

consumer demand. Thus, the marketplace will help ensure that consumers continue to receive high-quality service from wireless carriers.

V. CONCLUSION.

The Commission should continue to rely on the competitive market to govern wireless roaming arrangements. It should repeal Section 20.12(c) of the Commission's rules, and refrain from imposing new roaming regulations that might distort the benefits of competition in the wireless marketplace.

Respectfully submitted,

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